

DECISION OF MUNICIPAL TAX HEARING OFFICER

Decision Date: March 31, 2010

Decision: MTHO # 555

Taxpayer: *Taxpayer*

Tax Collector: City of Phoenix

Hearing Date: March 3, 2010

DISCUSSION

Introduction

On January 23, 2009, a letter of protest was filed by *Taxpayer* of a tax assessment made by the City of Phoenix (“City”). A hearing was commenced before the Municipal Tax Hearing Officer (“Hearing Officer”) on March 3, 2010. Appearing for the City were *Assistant City Attorney*, *Audit Services Supervisor*, and *Tax Auditor*. Appearing for Taxpayer was *Taxpayer Representative*. At the conclusion of the March 3, 2010 hearing, the Hearing Officer closed the record and indicated a written decision would be issued on or before April 19, 2010.

DECISION

Taxpayer is in the pizza restaurant business. On September 13, 2007, the City sent a Notice of Non-Compliance (“Notice”) requesting Taxpayer file twenty-four outstanding tax returns. On May 19, 2008, Taxpayer was sent a Notice and Demand to File Tax Returns (“Demand Notice”). The Demand Notice informed Taxpayer that twenty-five tax returns were delinquent. The Demand Notice informed Taxpayer that failure to comply with the Demand Notice would result in delinquent amounts being assessed an additional penalty of twenty-five percent. On May 28, 2008, the City received the certified receipt that Taxpayer had received the May 19, 2008 letter. Taxpayer failed to respond to the Demand Notice and as a result, the City Collections Section referred the matter to the City Tax Audit Section to estimate the missing returns. On October 6, 2008, the City issued a Preliminary Findings Letter (“Preliminary Letter”) that estimated the revenues for the missing tax returns based on the average of previously reported revenues. On November 13, 2008, Taxpayer provided actual figures for the month of August 2007 which were used in the final assessment. On December 19, 2008, the City issued a Notice of Jeopardy Tax Assessment (“Jeopardy Assessment”). The City assessed Taxpayer for additional taxes in the amount of \$16,811.70, interest in the amount of \$4,406.03, and penalties totaling \$7,732.82.

On January 23, 2009, Taxpayer made a \$17,000.00 payment and requested the penalties be abated. Taxpayer provided testimony that she had three businesses to keep going with

twenty-two employees. Because of other priorities with the three businesses, Taxpayer was unable to complete the missing returns in a timely manner.

Clearly, Taxpayer failed to timely file or pay taxes on twenty-four returns during the period of March 2000 through August 2007. The City called Taxpayer on June 8, 2006 and left a message about missing returns. The City called Taxpayer on at least three other occasions over the next year. On September 13, 2007, the City notified Taxpayer by letter of its non-compliance. On October 23, 2007, Taxpayer requested the City to fax over the missing returns and Taxpayer would review the records for the returns. The City faxed over the missing returns but none were received back from Taxpayer. Over the next several months, Taxpayer continued to promise the City that returns would be filed. The only tax return filed was the December 2007 return on February 1, 2008. Subsequently, the City sent Taxpayer the Demand Notice on May 19, 2008. Taxpayer again failed to provide returns and the Preliminary Letter was sent on October 6, 2008. As noted above, Taxpayer finally provided some actual numbers on November 13, 2008. This was over two years since the City's original request on June 8, 2006.

Since Taxpayer failed to timely file tax returns or timely pay taxes, the City was authorized pursuant to City Code Section 5-10-540(b)(1) & (b)(2) ("Section 540(b)") to impose penalties. Since Taxpayer failed to comply with the City's Demand Notice, the City was also authorized to assess a penalty pursuant to Section 540(b)(3). Section 540 provides the penalties may be waived when a taxpayer demonstrates reasonable cause. Section 540 defines "reasonable cause" when a taxpayer exercises ordinary business care and prudence. We do not find that Taxpayer exercised ordinary business care and prudence when it took over two years to provide requested documentation. Accordingly, we conclude that Taxpayer failed to demonstrate reasonable cause and the penalties are approved. We note that Taxpayer also requested that it be considered for the City's tax amnesty program. The City acknowledged that it had an amnesty program in which a taxpayer could request a waiver of penalties. The City indicated that Taxpayer failed to request any waiver during the period the amnesty program was on-going. The Hearing Officer concludes that he has no jurisdiction to re-open the amnesty program and as a result must deny Taxpayer's request at this time. Based on all the above, Taxpayer's protest should be denied.

FINDINGS OF FACT

1. On January 23, 2009, Taxpayer filed a protest of a tax assessment made by the City.
2. Taxpayer is in the pizza restaurant business.
3. The City called Taxpayer on June 8, 2006 and left a message about missing tax returns.
4. The City attempted for almost two years to obtain tax returns from Taxpayer.

5. The City sent a Demand Notice to Taxpayer on May 19, 2008.
6. Taxpayer failed to respond to the Demand Letter in a timely manner.
7. The City sent a Preliminary Letter to Taxpayer on October 6, 2008.
8. On November 13, 2008, Taxpayer provided some actual figures for the month of August 2007 which was used by the City in the final assessment.
9. The City issued a Jeopardy Assessment on December 19, 2008.
10. The City assessed Taxpayer for additional taxes in the amount of \$16,811.70, interest in the amount of \$4,406.03, and penalties totaling \$7,732.82.
11. Taxpayer made a \$17,000.00 payment on January 23, 2009 and requested the penalties be abated.
12. Taxpayer failed to timely file tax reports or timely pay taxes.
13. Taxpayer failed to comply with the City's Demand Notice.
14. There was no evidence to demonstrate that Taxpayer timely requested to participate in the City's amnesty program.

CONCLUSIONS OF LAW

1. Pursuant to ARS Section 42-6056, the Municipal Tax Hearing Officer is to hear all reviews of petitions for hearing or redetermination under the Model City Tax Code.
2. City Code Section 5-10-540(b)(1) & (2) imposes a penalty on taxpayers that fail to timely file tax returns and fail to timely pay taxes.
3. Taxpayer failed to timely file or pay taxes on twenty-four tax returns during the period of March 2000 through August 2007.
4. City Code Section 540(b)(3) imposes a penalty for failure of a taxpayer to comply with the City's request to file missing returns.

5. Taxpayer failed to comply with the City's request to file missing returns.
6. Penalties may be waived based on a showing of reasonable cause.
7. Section 540 defines "reasonable cause" when a taxpayer exercises ordinary business care and prudence.
8. Taxpayer has failed to demonstrate reasonable cause.
9. None the penalties in this matter should be waived.
10. Taxpayer's protest should be denied, consistent with the Discussion, Findings, and Conclusions, herein.

ORDER

It is therefore ordered that the January 23, 2009 protest by *Taxpayer* of a tax assessment made by the City of Phoenix is hereby denied consistent with the Discussion, Findings, and Conclusions, herein.

It is further ordered that this Decision is effective immediately.

Jerry Rudibaugh
Municipal Tax Hearing Officer